



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *EJ*
DATE: July 7, 1995
SUBJECT: MUR 3774 - First General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

72 Hour Tally Vote (XX)
Sensitive (XX)
Non-Sensitive ()

24 Hour Tally Vote ()
Sensitive ()
Non-Sensitive ()

24 Hour No Objection ()
Sensitive ()
Non-Sensitive ()

Information ()
Sensitive ()
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Other ()

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Other (See Distribution
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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA R. DAVIS *L.R.D.*
COMMISSION SECRETARY

DATE: JULY 12, 1995

SUBJECT: MUR 3774 - FIRST GENERAL COUNSEL'S REPORT
DATED JULY 7, 1995

The above-captioned document was circulated to the
Commission on FRIDAY, JULY 7, 1995 at 4:00 p.m.

Objection(s) have been received from the
Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_____
Commissioner Elliott	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner McGarry	<u>XXX</u>
Commissioner Potter	_____
Commissioner Thomas	_____

This matter will be placed on the meeting agenda
for TUESDAY, JULY 18, 1995.

Please notify us who will represent your Division before
the Commission on this matter.

SENSITIVE

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

FIRST GENERAL COUNSEL'S REPORT **JUL 7 12 23 PM '95**

MUR 3774

DATE COMPLAINT FILED: May 14, 1993
AMENDMENT FILED: February 22, 1995
DATE OF NOTIFICATION: May 20, 1993
AMENDMENT NOTIFICATION: March 6, 1995
DATE ACTIVATED: March 8, 1995

STAFF MEMBERS: Dawn Odrowski
Elizabeth Stein

COMPLAINANT: Democratic Senatorial Campaign Committee

RESPONDENTS: National Republican Senatorial Committee and
Stan Huckaby, as treasurer
United States Senator Philip Gramm
Curt Anderson
National Right to Life Committee, Inc.
National Right to Life Committee Political Action
Committee and Amarie Natividad, as treasurer
Minnesota Citizens Concerned for Life Committee
for a Pro-Life Congress and Jacqueline A.
Schweitz, as treasurer
Pennsylvania Pro-Life Federation Federal PAC and
Frederick Pfister, as treasurer
Santorum '94 and Judith M. McVerry, as treasurer
Rod Grams for U.S. Senate Committee and
L. Maria Taubenberger, as treasurer
American Defense Foundation
Christian Coalition
Coalitions for America
Free Congress Foundation/National Empowerment
Television
Good Government Committee

RELEVANT STATUTES: 2 U.S.C. § 431(8)
2 U.S.C. § 431(9)
2 U.S.C. §§ 433 and 434
2 U.S.C. § 441a(a)(7)(B)
2 U.S.C. § 441a(d)
2 U.S.C. § 441a(f)
2 U.S.C. § 441a(h)
2 U.S.C. § 441b
11 C.F.R. § 102.5
11 C.F.R. § 106.5
11 C.F.R. § 110.7
11 C.F.R. § 114.4

INTERNAL REPORTS CHECKED: Disclosure Reports and FEC Indices

FEDERAL AGENCIES CHECKED: None

4410-265-10-95
25 JUL 1995

I. GENERATION OF MATTER

This matter was generated by a complaint received on May 14, 1993, from counsel for the Democratic Senatorial Campaign Committee. The complaint alleges that the National Republican Senatorial Committee ("NRSC") made payments of non-federal funds to four organizations to circumvent the coordinated party expenditure limits of the Act and influence the 1992 Georgia run-off election of United States Senator Paul Coverdell.

Respondents who received funds from the NRSC include the National Right to Life Committee ("NRLC"), the American Defense Foundation ("ADF"), the Good Government Committee ("GGC"), and the Coalitions for America ("CFA"). The complaint additionally names two groups purportedly affiliated with the CFA, the Free Congress Foundation, and National Empowerment Television, as well as the National Right to Life Political Action Committee, and Amarie Natividad as treasurer ("NRL PAC"), Curt Anderson, an employee of the NRSC, and the Christian Coalition as parties who may have violated the Act. See Attachment 1.

Complainant filed an amendment to the complaint on February 22, 1995, alleging that the NRSC and its then Chairman, Senator Phil Gramm, again circumvented the coordinated party expenditure limits of the Act by paying non-federal funds to the National Right to Life Committee in order to influence the 1994 federal elections of Senator Rick Santorum in Pennsylvania and Senator Rod Grams in Minnesota after nearly exhausting allowable

coordinated expenditures in the two states.¹ The complaint also names NRL PAC, Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress and Jacqueline A. Schweitz, as treasurer ("MCCL PAC"), the Pennsylvania Pro-Life Federation Federal PAC and Frederick Pfister, as treasurer ("PPLF PAC"), and the campaign committees of Senators Santorum and Grams as respondents in this matter. See Attachment 2.

Responses to the original complaint were received from the NRSC, the NRLC, the ADF, the GGC, the CFA, the Free Congress Foundation/National Empowerment Television, and the Christian Coalition. Joint responses to the amended complaint were received from the NRSC and Senator Phil Gramm, and from the NRLC, NRL PAC, MCCL PAC and PPLF PAC. Responses were also received from Santorum '94 and Judith McVerry, as treasurer and the Rod Grams for Senate Committee and L. Maria Taubenberger, as treasurer. The ADF, the GGC and CFA also filed responses to the amended complaint.

An examination of the complaint and the disclosure reports of the reporting entities reveals a repeated pattern of payments to various organizations by the NRSC's non-federal account in the days and weeks before U.S. Senate elections. In the case of the 1992 and 1994 elections identified in the complaint, these payments were made when the NRSC had nearly exhausted its ability to make expenditures on behalf of its candidates.

1. On February 22, 1995 counsel for complainant, Democratic Senatorial Campaign Committee, also filed a suit for declaratory and injunctive relief against the Commission, pursuant to 2 U.S.C. § 437g(a)(8)(A), for failure to act within 120 days of the filing of the complaint.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

National party committees occupy a special place within the political arena and the Federal Election Campaign Act of 1971, as amended ("the Act"), acknowledges this unique position by providing special mechanisms to allow national party committees an enhanced role within the process. The Act specifically provides that a national party committee or the party's senatorial campaign committee, or both in combination, may make a contribution of \$17,500 to each Senate candidate associated with the party in the year in which the candidate's election is held. 2 U.S.C. § 441a(h). A contribution is defined as "any gift, subscription, loan, advance or deposit of money or anything of value made by an person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions, i.e., "the provision of any goods and services without charge. . ." 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

In addition to the \$17,500 contribution limit, the Act also permits national and state party committees to make extensive coordinated expenditures on behalf of candidates for federal office in the general election according to the formula set out in 2 U.S.C. § 441a(d). Coordinated party expenditures are those made by a national party committee on behalf of a specific candidate but not paid directly to the candidate or committee. The Act defines an "expenditure" as including any purchase, payment, distribution, loan, advance, deposit, or gift of money, or anything of value, made by any person for the purpose of

influencing any election for federal office. No candidate or political committee shall knowingly make any expenditure in violation of the provisions of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

The coordinated expenditure provision enables political party committees to engage in activity that would otherwise result in a contribution to a candidate, and is the primary mechanism available to national and state party committees to support their candidates. See H.R. Rep. No. 94-1057, 94th Congress, 2d Session 59 (1976). The national and state political party committees may designate the party's senatorial campaign committees as their agent for purposes of making these expenditures. 11 C.F.R. § 110.7(a)(4), see also FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 28-29 (1981). The Act recognizes that parties are partisan organizations whose motivation is to further the goals of the party, and provides that a party, by definition, is incapable of making independent expenditures. See 11 C.F.R. § 110.7(b)(4); Advisory Opinion 1980-119; and FEC v. Colorado Republican Federal Campaign Committee, 1995 WL 372934 *1 (10th Cir. 1995) ("Colorado Republicans"). Hence, expenditures by a party committee or its designated agent on behalf of a candidate are presumed to be coordinated with the candidate and count towards the coordinated expenditure limits established by 2 U.S.C. § 441a(d)(3), regardless of whether the expenditures are actually coordinated with the candidate's campaign.

The national party committee and the senatorial and congressional campaign committees may also conduct generic party activity without such activity resulting in either a contribution

or counting towards a coordinated expenditure limit so long as no specific candidate is mentioned. 11 C.F.R. § 106.5(a)(2)(iv). Generic party activity includes voter identification drives, voter registration, get out the vote drives ("GOTV") and any other type of activity that encourages the general public to vote or support candidates of the particular party or associated with a particular issue, without mentioning a specific candidate. Id.

A party committee which finances political activity in connection with both federal and non-federal elections is required to either establish separate federal and non-federal accounts or conduct all activity in accordance with the limitations and prohibitions of the Act. 11 C.F.R. § 102.5(a)(1). All disbursements, contributions, expenditures and transfers in connection with any federal election must be made from the committee's federal account. 11 C.F.R. § 102.5(a)(1)(i).² The Commission has previously held that where an organization with federal and non-federal accounts appears to have violated 11 C.F.R. § 102.5 by disbursing funds from a non-federal account in connection with a federal election, the committee violated 2 U.S.C. § 441b(a) if the non-federal account contained corporate or labor organization funds at the time of the disbursement. See

2. Where a national party committee conducts activity which is in connection with both federal and non-federal elections, including generic party activity, all disbursements for the shared activity must still be from the federal account or from a separate allocation account established solely to pay allocable expenses. 2 U.S.C. § 106.5(g). The non-federal account must transfer funds to the federal account or an allocation account solely to cover the non-federal share of an allocable cost. Id. A national party Senate committee must allocate to its federal account a minimum of 65% of its administrative and generic voter drive expenses. 11 C.F.R. § 106.5(c)(2).

e.g., MURs 2998, 2160, 3670. If the disbursement is made for the purpose of influencing federal elections it also qualifies as a contribution and is subject to the Act's contribution limits. Multicandidate political committees, including a party's Senate campaign committee, may contribute up to \$5,000 per year to non-candidate political committees. 2 U.S.C. § 441a(a)(2)(C). The Act also prohibits corporations from making contributions or expenditures in connection with federal elections and prohibits any candidate or committee from knowingly accepting such prohibited contributions or expenditures. 2 U.S.C. § 441b.³ In order for the prohibitions of 2 U.S.C. § 441b to apply to corporate expenditures, however, the Supreme Court in FEC v. Massachusetts Citizens for Life ("MCFL") held that independent corporate expenditures must constitute "express advocacy." 479 U.S. at 248. Thus, a corporation may use its general treasury funds to make independent communications to the general public, including voter registration, GOTV material and phone banks, provided these activities do not expressly advocate the election or defeat of a clearly identified candidate. 11 C.F.R. § 114.4(b).⁴ However, corporate expenditures for such activities

3. A corporation may, however, establish a separate segregated fund to accept contributions and make expenditures in connection with federal elections. 2 U.S.C. § 441b(b)(2)(C). The corporation then acts as a "connected organization," an organization which is not a political committee but which directly or indirectly establishes, administers or financially supports a political committee. 2 U.S.C. § 431(7); 11 C.F.R. § 100.6(c).

4. The Commission has proposed revisions to its regulations governing corporate voter registration and GOTV drives to clarify that voter registration and GOTV drives aimed at the general public are permitted provided that they do not expressly advocate the election or defeat of a candidate or political

made in cooperation, consultation or concert with a candidate, a candidate's authorized committee or their agents are considered contributions and are thus prohibited by 2 U.S.C. § 441b. See 2 U.S.C. § 441a(a)(7)(B) and proposed Commission revisions to 11 C.F.R. 114.4(d), supra, at footnote 4 (providing that corporate voter drives shall not be coordinated with a candidate, group of candidates or political party). Thus, political party committees cannot use corporations as vehicles to make expenditures, which if made by the party itself, would be impermissible under the Act.

The Act also exempts from the definition of expenditure the costs of nonpartisan activity by corporations designed to encourage individuals to vote or register to vote. 2 U.S.C. § 431(9)(B)(ii). The legislative history of the 1979 amendments to the Act suggests that unlike corporations, party committees are not entitled to this exemption. In the 1979 amendments, Congress considered and apparently rejected extending 2 U.S.C. § 431(9)(B)(ii) to payments by party committees for voter drive activities. Instead, Congress passed a limited exemption for voter drives in support of a party's nominees for President and Vice President. See 2 U.S.C. § 431(8)(B)(xii) and (9)(B)(ix); S. Rep. No. 319, 96th Cong. 1st Sess. at 9 (1979) at 457 and

(Footnote 4 continued from previous page)
party and are not coordinated with a candidate or political party. See proposed revisions to 11 C.F.R. § 114.4(d) contained in Notice of Proposed Rulemaking for Independent Expenditures; Corporate and Labor Organization Expenditures; Proposed Rule, 57 Fed Reg. 33548, 33566 (1992). These provisions were proposed in light of the Supreme Court's ruling in FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) and subsequent cases interpreting that decision. See especially, Faucher v. FEC, 928 F. 2d 468 (1st Cir.), cert. denied, 502 U.S. 820 (1991)(invalidating the Commission's voter guide regulations at 11 C.F.R. § 114.4(b)(5)).

S.1757, 96th cong. 1st Sess., reprinted in Legislative History of Federal Election Campaign Act of 1979 (hereinafter "Legislative History") at 457 and S. 1757, 96th Cong. 1st Sess. §§ 101(b)(5) and (c)(4) (1979), reprinted in Legislative History at 503, 506.⁵ Hence, a party committee cannot take advantage of an exemption for voter drive activity apparently unavailable to it by giving funds to an entity which does qualify for the exemption.

An organization becomes a political committee pursuant to 2 U.S.C. § 431(4) if it receives contributions or makes expenditures aggregating in excess of \$1,000 during a calendar year. Additionally, the Supreme Court has held that "[t]o fulfill the purpose of the Act [the designation of political committee] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Buckley v. Valeo, 424 U.S. 1, 79 (1976); MCFL, 479 U.S. 238, 252 n.6 (1986). If an organization meets the "major purpose test" and reaches the requisite contribution/expenditure dollar threshold, it must register with the Commission as a political committee and file periodic reports of receipts and disbursements. 2 U.S.C. §§ 433 and 434.

5. This view was integral to the analysis in MUR 3670 (California Democratic Party) where the Commission found reason to believe that the California Democratic Central Committee violated, inter alia, 2 U.S.C. 441b and 11 C.F.R. § 102.5(a)(1)(i) by making payments from a non-federal account to a California political committee to engage in voter registration activity. See First General Counsel's Report dated April 6, 1994 in MUR 3670 (California Democratic Central Committee) at 4-5 and 14.

B. Allegations & Responses

Complaint

On November 24, 1992, pursuant to Georgia state law, a run-off election was held for United States Senate after neither Democratic incumbent Wyche Fowler nor Republican challenger Paul Coverdell received fifty percent of the vote in the regularly scheduled November 3, 1992 general election. Between November 10 and November 18, 1992, after having exhausted their coordinated expenditure limitations,⁶ the NRSC made \$122,000 in payments from their non-federal account to four tax-exempt groups. These payments included \$30,000 to the American Defense Foundation on November 10, \$40,000 to the Coalitions for America on November 11, \$45,000 to the National Right to Life Committee on November 17, and \$7,000 to the Good Government Committee on November 18.⁷

The complaint alleges that the NRSC spent this non-federal money to influence the election of Republican Senate candidate Paul Coverdell in the Georgia run-off. Based on the timing of the payments and the fact that the groups are "closely tied to and have strongly supported the Republican party over time," the complaint alleges that NRSC knew that the money would be expended on behalf of Coverdell. Since NRSC's nonfederal account contains

6. See First General Counsel's Report dated March 23, 1993 in MUR 3708 (NRSC) at page 8.

7. The complaint also references additional payments from the NRSC totaling \$65,000: \$15,000 to the NRLC and \$50,000 to CFA made in October 1992. In fact, as the NRSC response specifies, the NRSC made a total of \$340,000 in payments to these groups in October 1992: \$250,000 to ADF, \$50,000 to CFA, and \$40,000 to NRLC.

corporate contributions, the complaint also alleges that by making the payments, the NRSC violated 2 U.S.C. § 441b by using corporate money in connection with a federal election and 2 U.S.C. § 441a by making excessive contributions to the various groups. See Attachment 1.

In response, the NRSC states that its payments to the non-party groups are legal donations "historically" made from its non-federal account to "a wide variety of non-partisan tax exempt organizations." See Attachment 3 at 2. The NRSC also states in response that the payments were accompanied by transmittal letters which stated that the money was to be used for "'good government activities' . . . 'in a manner consistent with' the organizations charter" and that "utilizing of this money in any way to influence a federal election is strictly prohibited." Id. at 4, 16.

Two of the groups which received money from the NRSC, the NRLC and ADF, acknowledge that they were active in the Georgia run-off race. Counsel for NRLC and its separate segregated fund, NRL PAC, acknowledge that NRLC received \$45,000 from the NRSC and that the NRLC engaged in "non-partisan, issue oriented, get-out-the-vote activity" in the Georgia election. Attachment 4 at 1-2. NRLC's response does not directly address whether the money received from the NRSC was the money used for its GOTV activity. Counsel's response also includes a copy of a GOTV telephone script apparently used in the run-off. Id. at 3. The response acknowledges that NRL PAC made independent expenditures on behalf of Coverdell contemporaneous with the receipt of the NRSC funds but contends that both the acceptance of NRSC funds by NRLC and the independent expenditure activity of NRL PAC were

"perfectly legal." Id. at 1.

The American Defense Foundation, a 501(c)(4) organization which describes its purpose as seeking to inform and educate on issues "including veterans affairs and problems relating to prisoners of war and persons missing in action, and to encourage public dialogue on these issues," acknowledges receiving \$30,000 from the NRSC. Attachment 5 at 2 and 24. In an affidavit attached to the response, Eugene "Red" McDaniel, president of ADF, states that "ADF has conducted and continues to conduct nonpartisan registration and get-out-the-vote drives for military personnel and their families" and that "I did encourage voter turn-out through public appearances and radio advertisements in Georgia as part of ADF's program of encouraging voter participation in the American political process by all military personnel." Id. at 24. As evidence of the non-partisan nature of the ADF, the response includes a copy of a 1992 letter sent by the ADF to Ron Brown, then-Chairman of the Democratic National Committee, seeking a meeting to discuss ADF's voter registration and turn-out the vote program. Id. at 28. With regard to the funds received from the NRSC, Mr. McDaniel states that ADF "clearly expressed that it would not use these funds to support or oppose any candidate for federal office nor for any partisan political activity." Id. at 24-25. Like the NRLC response, the ADF's response and affidavit do not address whether the NRSC funds were used to finance the GOTV activities in the Coverdell/Fowler run-off election.

Responses were also received from the two other organizations that received payments from the NRSC in 1992,

Coalitions for America and the Good Government Committee. See Attachments 6 and 7. Both of these organizations acknowledge receiving the NRSC payments but deny using them in connection with the run-off election. CFA's president avers in a sworn affidavit that "CFA has spent no money, directly or indirectly, in connection with said Georgia political campaign or any other political campaign" and further states that if it had "I would know about it." Attachment 6 at 16. The response offers no information about why NRSC gave CFA \$40,000 just prior to the 1992 Georgia run-off or how it spent those funds.

The response of the Good Government Committee, an Alabama state political committee which has since terminated, contains a less comprehensive denial. In an unsworn statement, counsel simply states that the GGC "has not made any contributions to Republican candidate Paul Coverdell in any political race in which he was a contestant in the state of Georgia." Attachment 7 at 1. Counsel does not address the circumstances, purposes or use of NRSC's donation, nor does counsel address whether GGC engaged in any independent expenditure activity in connection with the run-off election.

The complaint additionally names the Free Congress Foundation and its subsidiary National Empowerment Television as well as the Christian Coalition as respondents in this matter. Neither FCF/NET nor the Christian Coalition received direct payments from the NRSC and each of their responses focuses on this fact. See Attachment 7A.

Amendment

On February 22, 1995, complainants filed an amendment

stating that NRSC again violated the coordinated expenditure limitations of the Act by making \$175,000 in payments from non-federal funds to the NRLC between October 31 and November 4, 1994. The basis for the amendment was a series of statements made to a Washington Post reporter at a February 10, 1995 luncheon by Senator Phil Gramm, the Chairman of the NRSC at the time of the 1992 and 1994 elections. According to a February 12, 1995 Post article, Senator Gramm stated that "I made a decision . . . to provide some money to help activate pro-life voters in some key states where they would be pivotal in the election. See Attachment 2 at 8 (emphasis added). Gramm went on to particularly mention the Senate elections in Minnesota and Pennsylvania. Id. at 9. Gramm later contacted the reporter and indicated that his original statement was incorrect and that the reason for the payments was that the NRLC's "message conformed to the Republican message." Id. at 8.

Counsel responded to the amendment on behalf of the NRSC and Senator Gramm on April 6, 1995. The response states that NRSC's \$175,000 in payments to the NRLC are simply further examples of NRSC's "long-standing pattern of making donations to non-profit organizations." See Attachment 8 at 3-4. The response further states that a transmittal letter from the General Counsel of the NRSC again accompanied each payment stating that the "contribution to your organization should be used for good government activities that are consistent with your organization's not-for-profit character. Please note that utilizing this money in any way to influence a federal election is strictly prohibited." Id. at 4-5. In discussing its pattern of charitable giving, the NRSC

references the same 1992 non-federal payments at issue in the original complaint. See id. at 3-4.

In an affidavit attached to NRSC's response, Senator Gramm states that after the luncheon where he made his initial comments to a Washington Post reporter, he "had a chance to review the facts and check the NRSC's records" and "realized that [his] off-the-cuff comments about NRSC's donations to the National Right to Life Committee had been incorrect." Id. at 25.

A one-page response to the amended complaint was received from counsel jointly representing NRLC, NRL PAC, Minnesota Concerned Citizens for Life Committee for a Pro-Life Congress ("MCCL PAC") and the Pennsylvania Pro-Life Federation Federal PAC ("PPLF PAC"). The response appears to acknowledge receipt of NRSC funds by the NRLC and GOTV activity by one or more of the organizations in the relevant elections. See Attachment 9. The response also seems to acknowledge that NRSC funds were used for the GOTV activity. Counsel states that " . . . any distribution of voter guides or any nonpartisan get-out-the-vote calls by my clients would be lawful activities because they do not contain express advocacy -- regardless of whether my clients received any monies from the National Republican Senatorial Committee which were then used to fund such activities." Id. (emphasis in original).

Responses were also received from the ADF and the GGC. ADF requests it be dismissed from the MUR, pointing out that the amendment contains a single reference to it in a footnote "erroneously comparing" NRSC's payments to ADF with its 1994 payments to NRLC. Attachment 10 at 1-2. GGC's counsel advises

the group was dissolved on January 14, 1994 and denies "the allegations of the complaint and the amended complaint as it relates to any wrongdoing on behalf of the Good Government Committee." Attachment 11 at 1. Finally, responses to the amended complaint were received from Santorum '94 and Grams for U.S. Senate and their respective treasurers. The Santorum committee asserts that they have no information regarding the NRSC's 1994 payments to NRLC and states that they properly reported contributions received from PPLF PAC. See Attachment 12. The Grams Committee responds that they can find no allegation of wrongdoing by them in the complaint. See Attachment 13.

Although respondents in this matter acknowledge receipt of funds from the NRSC, the responses generally fail to make clear the circumstances surrounding the receipt and use of NRSC funds by these groups. Specifically, the responses fail to indicate whether the funds were solicited from the NRSC, whether there was any understanding between the groups and the NRSC as to how the funds would be spent beyond the boiler-plate statement in the transmittal letter, and most notably, how the funds were used.

C. Analysis

As discussed below, a variety of factors including the timing of the payments, NRSC's near exhaustion of coordinated expenditures limits at the time the payments were made, public remarks by an NRSC official, and the close nature and strategic importance of the various races support an inference that the NRSC may have violated the Act given the information presently available. The NRSC's 1992 and 1994 payments are discussed in sections 1 and 2 below. The FECA implications of the payments

upon the four recipient groups are discussed in section 3. The remaining respondents are discussed in section 4.

1. 1992 Activity

On November 24, 1992, three weeks after the November 3, 1992 general election, a Senate run-off election was held in Georgia between Republican Paul Coverdell and Democrat Wyche Fowler. Prior to the general and run-off elections, the NRSC had made direct contributions of \$17,500 and coordinated expenditures of \$535,607 on behalf of Paul Coverdell, the maximum allowed for an election. On November 6, 1992, the NRSC sought an advisory opinion from the Commission to determine whether the NRSC could permissibly make additional coordinated expenditures for the run-off. On November 19, 1992 the Commission advised the NRSC that it had split 3-3 on a draft opinion holding that no additional coordinated expenditures were available. The next day, the NRSC reported making an additional \$535,000 in coordinated expenditures for Coverdell in the run-off. See General Counsel's Report dated March 23, 1993 in MUR 3708 at 8, n. 5 and 6.⁸

Between November 10 and November 18, 1992, while awaiting the Commission's decision regarding the permissibility of additional coordinated expenditures, the NRSC made payments of \$30,000 to the ADF, \$40,000 to CFA, \$45,000 to NRLC and \$7,000 to the GGC. At the time the NRSC made the payments, news reports in

8. Due to refunds from vendors, NRSC's disclosure reports reveal that it ultimately made \$509,570 in coordinated expenditures for the run-off. See General Counsel's Report dated December 7, 1994 in MUR 3708 at 7. The validity of NRSC's additional coordinated expenditures is the subject of MUR 3708, which has been reopened and is currently pending after remand from the U.S. District Court.

early November 1992 quote Coverdell aides as saying the campaign was low on cash in what was expected to be a very close run-off. See attachment 14. Additionally, two of the organizations which received money from the NRSC, the NRLC and the ADF, are accomplished at turning out the vote for their target issues. See e.g., newsletter attached as Exhibit 10 to the complaint (available in docket).

Both the NRLC and the ADF acknowledge engaging in GOTV activity in the run-off but neither provides details of their activities. The NRLC states it engaged in "non-partisan, issue oriented, get-out-the-vote activity" including phone banks using a script which urged persons called to "please vote tomorrow" after describing Coverdell's and Fowler's positions on certain abortion issues. Attachment 4 at 3.⁹ The NRLC does not specify whether this GOTV effort was funded with the \$45,000 payment received from the NRSC six days before the run-off. Because the NRLC is not a reporting entity, it is not possible to independently determine exactly how or when NRSC's funds were used. However, the NRLC's apparent last-minute GOTV activity in the run-off coincides with receipt of NRLC's payment.

The reports of NRL PAC, NRLC's separate segregated fund, reflect last-minute support of Coverdell. NRL PAC reports show no support for Coverdell prior to the run-off even though Coverdell

9. The script, entitled "CARD 1: GET OUT THE VOTE MESSAGE" begins by stating "your vote in tomorrow's run-off Senate election is crucial." It goes on to compare the candidates' positions on abortion, characterizing Fowler as in favor of an "abortion on demand" bill and tax funded abortions and Coverdell as opposed to the bill and "against using tax dollars for abortion." It is not known at this time to whom NRLC targeted its GOTV calls or how many different scripts were utilized.

faced the same opponent in the general election three weeks earlier. NRL PAC's reports for the run-off, however, reflect a \$2,500 contribution to Coverdell and \$15,330 in independent expenditures for radio ads supporting him, all made within 48 hours of NRSC's November payment.¹⁰

ADF also acknowledges engaging in voter turn out efforts in the 1992 Georgia election but its president contends that its activities were not targeted at specific candidates or parties. Attachment 5 at 24. ADF's response fails to specify the timing of its GOTV activities. However, a November 21, 1992 Georgia newspaper article attached to the complaint indicates ADF's president was in Georgia "touring military facilities and talking about Tuesday's run-off election" a week after ADF received NRSC's \$30,000 payment. Attachment 1 at 20. Since ADF is not a reporting entity and has not established a separate segregated fund, it is not possible to ascertain whether NRSC's funds were used to finance ADF's GOTV activities.

Additionally, the NRSC's disclosure reports reveal that in 1992 and 1993, the NRSC had an established pattern of making contributions to the ADF from its non-federal account in proximity to Senate elections. The ADF received \$250,000 prior to the 1992 general election, \$30,000 prior to the 1992 run-off, and \$210,000 in the months prior to the May 1993 special Texas Senate election

10. NRL PAC appears to have shared the cost of its independent expenditure radio ad campaign for Coverdell with MCCL PAC. MCCL PAC reports making independent expenditures totaling \$11,956.25 to the same radio stations listed in NRL PAC's reports, on the same date and in the same amounts. It also made a \$2,500 contribution to Coverdell on November 17, 1992, the same day as NRLC PAC.

and June 1993 Senate run-off,¹¹ for a total of \$490,000. Although the NRSC made no additional contributions to ADF in 1994, the ADF has continued to receive funds from the Republican National Committee.

Much less information is available at this time regarding CFA and GGC, the other two recipient organizations named in the complaint. Both admit to receiving the payments from the NRSC but neither explains the circumstances surrounding why the payments were made or what they were used for. The GGC says only that it was given the \$7,000 contribution on November 18, 1992 "to be used in a manner consistent with our charter for promoting good government," and denies making contributions to Coverdell. Attachment 7 at 1-2. GGC's state reports support its statement that it made no direct contribution to Coverdell in 1992. The purposes of its \$11,680 in reported expenditures are categorized generally as administrative, food and fundraising (two of the fundraising expenditures appear to be contributions to local candidates). A more precise purpose of these expenditures cannot be ascertained from GGC's state reports.

CFA's President, Eric Licht, acknowledges accepting two contributions from NRSC in 1992 totaling \$90,000 "each time upon the condition that the contribution was not to be used in any way to influence a federal election." Attachment 6 at 17. In fact, Licht avers that "CFA has spent no money, directly or indirectly, in connection with the said Georgia political campaign or any

11. Of the \$210,00 paid to ADF prior to the special Senate election in Texas, NRSC's non-federal reports describe the purpose of a \$170,000 payment as "party building."

other political campaign." Id. at 16. Since CFA has no separate segregated fund and is not itself registered as a political committee with the Commission, it is impossible to determine at this point how it used NRSC's funds or what activities it engaged in that may have had an impact on the 1992 run-off election.

The NRSC's response to the complaint asserts that payments to all four of these groups were part of its past practice of making donations to tax-exempt non-partisan organizations from its non-federal account. However, since January 1991 when the NRSC's non-federal account was first required to file reports, all but two of its fifteen donations to non-profit groups¹² were made to the four organizations named in this matter between four days and two months preceding U.S. Senate elections. The remaining two donations were made to the Fair Government Foundation in October 1994 and February 1995.

2. 1994 Activity

In 1994, the NRSC once again made payments to the NRLC from its non-Federal account in the week before the general election. Between October 31, and November 4, the NRSC made four payments totaling \$175,000 to NRLC.¹³ In public comments to reporters,

12. This Office was unable to ascertain whether the NRSC made any such donations in July 1994 since the NRSC apparently failed to file supporting schedules itemizing the \$102,500 in "other disbursements" the non-federal account made that month. Although itemization is required pursuant to 11 C.F.R. § 104.9(c), the Reports Analysis Division's Review and Referral Procedures do not address reports filed by party committees' non-federal accounts. Accordingly, RAD has not generated an RFAI with regard to the omitted schedules.

13. NRSC's 1994 payments to the NRLC consisted of the following: \$50,000 on October 31, \$50,000 on November 1, \$60,000 on November 3, and \$15,000 on November 4.

former NRSC chairman Senator Phil Gramm confirmed that the NRSC made the payments to assist Republican candidates in specific races stating:

the Minnesota race turned on us in the last 20 days and . . . I made a decision that we were on the verge of losing that race. Pennsylvania turned on us . . . and the focus of this expenditure was trying to get into those states where we thought it made a difference.

Attachment 2 at 9. Hours after leaving the luncheon where the statements were made, but prior to the running of the story, Senator Gramm telephoned a reporter to say that he had been mistaken in his explanation as "the rules under which you contribute to groups like this through political committees are very strictly set." Id. at 8. Senator Gramm's follow-up statements may reflect a recognition on his part that his previous statements constituted an admission that the NRSC used the NRLC as a vehicle to make additional coordinated expenditures on behalf of Grams and Santorum.

Although Senator Gramm contacted the reporter to correct his statements before publication, asserting instead that the money was given because the NRLC's message conformed to the Republican message, he appeared on ABC's This Week With David Brinkley on February 12, 1994, two days after making the original statements saying ". . . [a]nd clearly we made the judgment that where we had a lot of close races . . . activism on behalf of the pro-life cause would help our candidates." See Attachment 15 at 2. In response to a question on whether the contributions were not simply a way of doing indirectly what the NRSC was prohibited from doing directly, Gramm responded with the following statement: "We

promote the message of groups that are comfortable with us. We must have done a pretty good job. We -- there are 11 new senators. We won all 11 of those seats." Id. at 2-3.

The combined national and state party coordinated expenditure limit for the 1994 Pennsylvania Senate race was \$1,075,544. Attachment 16. The combined national and state party coordinated expenditure limit for the 1994 Minnesota Senate race was \$385,588. Id. As of October 25, 1994, the NRSC had made its final significant coordinated expenditures for the Minnesota and Pennsylvania races. At that time, the NRSC had spent \$1,063,150 in Pennsylvania and \$379,999 in Minnesota.¹⁴ See Attachment 17. Six days after making the last of these expenditures, which brought the NRSC close to its statutory limit for these elections, the NRSC made the first of its four payments to the NRLC.

News reports support Senator Gramm's statements that the Minnesota and Pennsylvania elections remained very close in the final weeks of the campaign. In Pennsylvania, Rick Santorum, who had been gaining steady ground, faced several problems after October 25. In the last week of October, Santorum's opponent was endorsed by Republican Theresa Heinz, widow of U.S. Senator John Heinz. On October 26, Santorum's opponent began airing an advertisement containing videotape of Santorum advocating raising

14. The NRSC made an additional \$1,150 in coordinated expenditures in Pennsylvania after October 25. The Pennsylvania expenditures were made in part by the Pennsylvania Republican Party.

the eligibility age for social security. See Attachment 18.¹⁵ Santorum himself acknowledged on November 3, 1994 that the ad had hurt him, particularly in the middle of the state. Attachment 19. Polls also showed a drop in Santorum's support in the final two weeks which analysts attributed to the ad.¹⁶

Similarly, news accounts in Minnesota show that Rod Grams' opponent Ann Wynn was gaining on him in the twenty days before the election. A Minneapolis Star Tribune poll completed October 17 showed Grams at 42% to Wynn's 35%, while a poll by the same organization completed November 4, 1994 showed Grams at 42% to Wynn's 38%, within a 4 point margin of error. See Attachment 21. The accompanying Minneapolis Star Tribune article on November 6 opined that: "[w]ith the electorate split between Wynn and Grams, the election now hinges on who does a better job of activating supporters and getting them to vote Tuesday." Attachment 22. On October 23, 1994, Wynn also received the endorsements of both the Minneapolis Star Tribune and the St. Paul Pioneer Press, the two major metropolitan papers in the state. Attachment 23. Finally, October Quarterly disclosure reports showed Wynn entering the last stretch of the election with more cash on hand than Grams. Attachment 24.

Both the Pennsylvania and Minnesota Senate races were key to

15. The ad featured videotape of Santorum saying "It's ridiculous to have a retirement age in this country of 65" and that he would move back the retirement age to "at least 70. . . I'd go farther if I could."

16. Polls conducted by the Greensburg Tribune-Review which had Wofford and Santorum at 40% each on October 20, showed Wofford with a 44% to 43% edge by November 3 while KDKA TV polls showed Wofford's lead widen from 1 point to 4 points between October 18 and November 2. See Attachment 20.

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a Republican Senate majority.¹⁷ The timing of the NRSC's payments to NRLC, made when two strategically important races appeared to turn against their candidates and NRSC had nearly exhausted its permissible spending limits, seems to support Gramm's initial statement that the payments to NRLC were made to aid Grams and Santorum. Moreover, given the closeness of both races, success appeared to depend on high voter turnout necessitating the maximum possible GOTV effort. Under these circumstances, NRSC's decision to make "donations" to NRLC, an organization with an established grassroots network, in the week before the 1994 general election, raises questions as to whether NRSC contributed to the NRLC to influence federal elections.

The NRSC responded to the amended complaint by reasserting its original contention that the payments to NRLC are merely "routine" contributions to charitable and good government activities. See Attachment 8 at 6. In apparent support of the routine and continuing nature of these contributions, NRSC references the 1992 contributions at issue in the original complaint and a 1995 contribution to the Fair Government Foundation. Id. at 3-4 and 14. NRSC additionally provided copies of transmittal letters accompanying the 1994 payments which state that "utilizing any of this money in any way to influence a federal election is strictly prohibited." See id. at 16-22. Finally, NRSC provided the affidavit of Senator Gramm which states that "these donations. . . were not used in connection with any

17. The closeness and strategic importance of the Pennsylvania race for the Republican party is also evidenced by NRSC political director, Paul Curcio, traveling with Santorum in the last week of the campaign. Attachment 25.

federal election" but were made "solely in support of organizations whose philosophy was compatible with the Republican Party's platform." Id. at 24. Senator Gramm further stated that while he set the policy for such donations, he "did not generally approve any particular donation." Id. With respect to his comments to reporters at the 1995 luncheon, Gramm said that after he had "an opportunity to review the facts and check the NRSC's records" he realized his "off the cuff comments about the NRSC's donations to the National Right to Life Committee had been incorrect." Id. at 24-25.

Although Senator Gramm has disavowed his initial remarks to reporters, his later comments on the David Brinkley program, that the NRSC made a judgment that "activism on behalf of the pro-life cause would help our candidates," as well as the timing and other circumstances surrounding the NRSC's payments, suggest his initial remarks were accurate. Attachment 15 at 2. In addition, NRSC's assertion that the payments were routine charitable contributions accompanied by cautionary disclaimer letters does not adequately refute the possibility that the funds were to aid the election of federal candidates given the close proximity of each donation to a United States Senate election. See MCFL, 479 U.S. 238, 249 (1986). Information that is not currently known, including whether or not the payments were solicited, how the payees were chosen, why the payments were made when they were, discussions between the parties, and use of the money, would permit a fuller factual record for assessing whether the payments were intended to influence specific federal races.

The amended complaint suggests that the money paid by NRSC

to NRLC was spent in the Grams and Santorum elections by NRLC's state affiliates, MCCL and PPLF, both of whom also have separate segregated funds. Because NRLC, MCCL and PPLF are all non-reporting entities, however, we cannot establish precisely how NRSC's funds were used from currently available information. Counsel for NRLC, who also represents the separate segregated funds of all three organizations (NRL PAC, MCCL PAC, and PPLF PAC) seems to acknowledge that NRSC's funds were used by one or more of the entities. However, the wording of the single page response is sufficiently ambiguous that no definite conclusion can be drawn about how NRSC's payments were used. The response states:

The activities in which my clients allegedly engaged were perfectly lawful. Specifically, any distribution of voter guides or any non-partisan get-out-the-vote calls by my clients would be lawful activities because they do not contain express advocacy -- regardless of whether my clients received any monies from the NRSC which were then used to fund such activities.

Attachment 9 (emphasis added).¹⁸ With regard to the separate segregated funds, while no activity by MCCL PAC or PPLF PAC is directly traceable to NRLC through currently-available information, both committees apparently financed activity in connection with the Grams and Santorum elections. MCCL PAC reported \$89,943 in independent expenditures on behalf of Rod

18. The amended complaint suggests that one use of the NRSC funds may have been a last minute get-out-the-vote phone campaign funded through an Austin, Texas telemarketing firm. A Minneapolis Star Tribune article attached to the complaint describes such a campaign which supported Republican candidates in Minnesota, Michigan and Tennessee who opposed abortion, including Grams. The article does not identify the organization who funded the campaign. Although the telemarketing firm was given the "rush order" on Friday, November 4, the same day NRSC made its last donation to NRLC, at this time it is unclear who funded this particular phone effort. See Attachment 2 at 10-11.

Grams between October 24 and November 11, 1994; \$53,500 of these expenditures were made after NRSC began making its payments to NRLC.¹⁹ PPLF PAC made \$2,300 in contributions to Santorum prior to NRSC's payments to NRLC. In the reporting period corresponding to NRLC's payments, most of PPLF PAC's \$13,818 in disbursements appear to be attributable to a voter guide or other large printing.²⁰

In sum, it appears that the NRSC, after exhausting its own ability to support its candidates, may have paid NRLC, ADF, CFA and GGC to perform GOTV activity on behalf of specific federal candidates in targeted races without using funds subject to the Act in violation of 2 U.S.C. § 441a(f), 441b(a) and 11 C.F.R. § 102.5(a)(1).²¹ Thus, this Office recommends the Commission find reason to believe that the National Republican Senatorial Committee and Stan Huckaby as treasurer violated 2 U.S.C. §§ 441a(f), 441b(a) and 11 C.F.R. § 102.5(a)(1)(i).

19. MCCL PAC did not report receipt of any transfers from NRLC or MCCL during this period. However, after reporting receipts of only \$385 from July 1 through October 19, 1994, MCCL PAC reported \$70,465 in receipts between October 20 and November 28, 1994, 99% from unitemized contributions. Additionally, MCCL's General Fund appears to have initially paid for \$8,936 in independent expenditures which should have been paid for by MCCL PAC. See discussion at p. 33.

20. These disbursements are for "postage for voters guide," "printing" and "shipping."

21. If the investigation reveals that NRSC funds were ultimately used for activity which qualified as generic voter activity and did not mention a specific candidate, NRSC may still have violated 11 C.F.R. § 106.5(c)(2) and 106.5(g) for failing to allocate between its federal and non-federal account and failing to make the disbursements attributable to federal candidates from its federal account.

3. Recipient Organizations

By virtue of its close relationship with its candidates, political party committees are considered incapable of making independent expenditures. 11 C.F.R. § 110.7(b)(4). Therefore, all expenditures made by the NRSC in connection with the general election of an identified candidate are treated as coordinated expenditures. FEC v. Colorado Republicans, 1995 WL 372934 (10th Cir. 1995). Had the NRSC conducted GOTV activity aimed at specific federal candidates, expenditures for those activities would be treated as coordinated expenditures subject to the applicable Section 441a(d) limit. Instead, it appears from the timing of the payments, the close nature and strategic importance of the races and public remarks made by NRSC's then-chairman, that the NRSC may have made payments to the tax-exempt recipient organizations to conduct GOTV activity, and possibly other federal election activity, in Georgia, Minnesota and Pennsylvania that the NRSC could not have undertaken itself without exceeding the Act's limits.

If the NRSC made payments to the recipient organizations in violation of 2 U.S.C. §§ 441a(f) and 441b, the spending of NRSC's funds necessarily has implications for the recipient organizations. By apparently accepting payments from the NRSC which constituted coordinated expenditures on behalf of specific candidates, the recipient organizations effectively coordinated GOTV activities with the candidates, through NRSC, and benefited both the NRSC and the Republican Senate candidates whose races were targeted in the activities. Three of the recipient organizations, NRLC, ADF and CFA are corporations. Thus, any

expenditures made by NRLC, ADF and CFA with regard to GOTV activity mentioning the Republican Senate candidates in the targeted states, may have constituted prohibited in-kind corporate contributions to the NRSC, the candidates, or both.

The NRLC and the ADF both admit having engaged in GOTV activities but contend that such activities were non-partisan and entirely legal. See e.g., 11 C.F.R. § 114.4(b) and (c). Specifically, the NRLC admits it engaged in "non-partisan, issue-oriented" GOTV phone bank activity for the 1992 Georgia run-off election. Attachment 4 at 1-2.²² NRLC also appears to acknowledge engaging in GOTV and voter guide activity for certain 1994 general election races but generally asserts that any such activities did not contain express advocacy. See Attachment 9. Similarly, ADF's president admits that he encouraged voter turnout in the 1992 Georgia election through public appearances and radio ads but denies that ADF made expenditures expressly advocating the election of a candidate. Attachment 5 at 24. If, as it appears, however, the GOTV activities were funded by and coordinated with the NRSC, the expenditures for those activities would constitute in-kind prohibited contributions. See the proposed Commission regulations at 11 C.F.R. §§ 114.2(c) and 114.4(d) at 57 Fed Reg. 33566 (clarifying that corporations shall not coordinate GOTV drives with any candidate, group of candidates or political party). As such, it would be irrelevant whether or not NRLC's and ADF's GOTV activities contained express advocacy. See Colorado

22. The phone script provided by NRLC which was apparently used in its GOTV activity indeed appears to be issue-oriented. However, NRLC does not represent whether this was the only script or explain how the phone bank was conducted.

Republicans, 1995 WL 372934 at *5.

Unlike NRLC and ADF, CFA's Director of Finance and Administration denies spending money, "directly or indirectly, in connection with any political campaign." However, CFA provides no information about how it used NRSC's funds, whether or how the funds were solicited or the understanding between the parties, if any, about how the funds would be used. In light of the circumstantial evidence suggesting that NRSC's payments were meant to aid federal elections, additional information is necessary to assess CFA's NRSC-funded activities.

Based on the foregoing, this Office recommends that the Commission find reason to believe that the National Right to Life Committee, the American Defense Foundation, and the Coalitions for America violated 2 U.S.C. § 441b(a).²³

The fourth recipient, the Good Government Committee, was registered in Alabama as a state political committee at the time it received NRSC's 1992 payment. If, as it appears, the NRSC's \$7,000 payment to the GGC was a coordinated expenditure intended to influence the election of a federal candidate, GGC's acceptance of it would have triggered political committee status, requiring

23. Any investigation in this matter may produce evidence that a major purpose of one or more of the corporate recipients was to engage in campaign activity. Under that scenario, the corporations may have become political committees subject to registration and reporting requirements since the NRSC's payments to each was well in excess of \$1,000. See 2 U.S.C. §§ 431(4), 433 and 434; Buckley v. Valeo, 424 U.S. 1, 79 (1976) and FEC v. Massachusetts Citizens for Life, 479 U.S.C. 238, 262 (1986).

GGC to register and report with the Commission.²⁴ Consequently, this Office recommends that the Commission find reason to believe that the Good Government Committee violated 2 U.S.C. §§ 433 and 434. Since reports filed with the Alabama Secretary of State's Office confirm that GGC terminated in January 1994, however, we recommend that the Commission simultaneously take no further action against the Good Government Committee and its treasurer and close the file as to them.

4. Other Respondents

Although none of the 1994 expenditures made by the separate segregated funds named in the complaint can be directly traced to the NRSC's payments, MCCL PAC's disclosure reports reveal apparent violations of 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a). As noted in the amended complaint, Schedule E of MCCL PAC's 1994 October and Post-General reports reflect numerous disbursements and reimbursements to the MCCL General Fund for costs incurred in connection with independent expenditures for several federal candidates, including Rod Grams. See Attachment 2 at 16, 23, 26-27.²⁵ MCCL General Fund appears to be an account of MCCL, Inc., the connected organization. Commission regulations require that all expenditures for federal elections be made from a federal account. 11 C.F.R. § 102.5(a)(1). Moreover, the apparent initial

24. As a state political committee, one of GGC's major purposes conceivably is to engage in campaign activity. Thus, GGC appears to meet the "major purpose" requirement established by the Supreme Court to ensure that the Act does not encompass groups engaged purely in issue discussion. See Buckley v. Valeo, 424 U.S. 1, 80 (1976) and FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 262 (1986).

25. The total of these eight disbursements and reimbursements to the General Fund is \$15,476.

disbursement of corporate treasury funds for costs incurred in connection with independent expenditures constitutes a prohibited contribution in violation of 2 U.S.C. § 441b. See also Advisory Opinion 1984-24. Accordingly, this Office recommends that the Commission find reason to believe that MCCL, Inc. and MCCL PAC and Jacqueline Schweitz, as treasurer, violated 11 C.F.R. § 102.5(a)(1) and 2 U.S.C. § 441b(a).

Senator Philip Gramm, former NRSC chairman and Curt Anderson, former Coalitions Director and Southern Regional Coordinator for the NRSC were also named as respondents. It is unclear at this point, the extent to which either was directly involved in authorizing the NRSC's payments to the four groups. Senator Gramm's remarks to the Washington Post indicate he decided to make the payments to the right-to-life groups. However, he states in his affidavit that he set NRSC's policy on non-federal donations but "did not generally approve any particular donation." As noted earlier, no information is currently available about how the NRSC's payments came about. Thus Curt Anderson's role in these payments is unknown. Accordingly, we recommend that the Commission take no action at this time with respect to Senator Phil Gramm and Curt Anderson.

Similarly, although NRL PAC and PPLF PAC participated in the 1992 Coverdell/Fowler run-off election and the 1994 Santorum and Grams elections, their activities are not directly traceable to the NRSC's payments through currently available information. Since discovery may reveal otherwise, we recommend that the Commission take no action at this time with respect to the NRL PAC and the PPLF PAC.

Finally, although the complaint contains no specific allegations that any pro-life group activities were coordinated with the Grams and Santorum committees, the investigation in this matter may reveal coordination between the campaigns and the recipient organizations. Accordingly, this Office recommends that the Commission take no action at this time against Santorum '94 and Judith McVerry, as treasurer and Grams for U.S. Senate Committee and L. Maria Taubenberger, as treasurer.²⁶ Other respondents named in this matter, FCF/NET and the Christian Coalition received no direct payments from NRSC. Accordingly this Office recommends that the Commission find no reason to believe that FCF/NET and the Christian Coalition violated the Act based on the complaint in this matter and close the file with regard to these organizations.

III. PRELIMINARY INVESTIGATION PLAN

This Office contemplates an investigation focusing primarily on the NRSC: the circumstances surrounding the NRSC's payments to the four groups, the understanding, if any, between NRSC and the groups as to how the funds were to be used, and how the NRSC's funds were spent. In order to obtain this information, it will be necessary to seek information regarding the activities, including how the GOTV activities were conducted, from the NRLC and the ADF in the limited periods surrounding the receipt of the NRSC's payments. Given the CFA's denial that it engaged in any election

26. Additionally, the Coverdell Senate Committee, Senator Paul Coverdell's principal campaign committee for the 1992 election, was not named in the original or the amended complaint. Accordingly, this Office makes no recommendation with regard to that committee at this time.

activity, limited discovery directed to CFA will attempt to substantiate the sworn statement submitted by its officer. Accordingly, in the interest of an expeditious resolution of this matter, this Office recommends that the Commission approve the attached subpoenas and orders to the NRSC, the NRLC, the ADF and the CFA.


IV. RECOMMENDATIONS

1. Find reason to believe that the National Republican Senatorial Committee and Stan Huckaby as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a), and 11 C.F.R. § 102.5(a)(1)(i).
2. Find reason to believe that the National Right to Life Committee violated 2 U.S.C. §§ 441b(a).
3. Find reason to believe that the American Defense Foundation violated 2 U.S.C. § 441b(a).
4. Find reason to believe that the Coalitions for America violated 2 U.S.C. §§ 441b(a).
5. Find reason to believe that the Good Government Committee and its treasurer violated 2 U.S.C. §§ 433 and 434 but take no further action and close the file as to them.
6. Find reason to believe that Minnesota Citizens Concerned for Life Inc. and Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress and Jacqueline A. Schweitz, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a)(1).
7. Take no action at this time with regard to Senator Phil Gram, Curt Anderson, National Right to Life Committee PAC and Amarie Natividad, as treasurer, Pennsylvania Pro-Life Federation PAC and Frederick Pfister, as treasurer, Santorum '94 and Judith McVerry, as treasurer, and Rod Grams for U.S. Senate Committee and L. Maria Taubenburger, as treasurer.
8. Find no reason to believe that the Free Congress Foundation/National Empowerment Television and the Christian Coalition violated the Act based on the complaint filed in MUR 3774 and close the file with regard to these Respondents.

9. Approve the attached Factual and Legal Analyses.
10. Approve the attached Subpoenas for Documents and Orders to Answer Interrogatories

Date

7/7/95


Lawrence M. Noble
General Counsel